IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL REVISION APPLICATION NO. 430 OF 2007

Shri Narendra G. Goel. ... Applicant.

V/s.

State of Maharashtra. ... Respondent.

Shirish Gupte, senior counsel with S.V. Marwadi for the applicant.

Raja Thakre for C.B.I.

S.S.Pednekar, APP for the State.

CORAM: V.C.DAGA, J.

DATED: 12th September 2007.

P.C.:

. Heard Mr.Gupte, learned senior counsel appearing with Mr.Marwadi for the applicant; Mr.Raja Thakre, Special Counsel for C.B.I. With Mr.Pednekar, learned A.P.P. For the State.

2. Perused revision application and the impugned order dated 28th August, 2007 passed by 11thAdhoc Additional Sessions Judge, Sewree, Mumbai in Criminal Misc. Application No.197/2007 which was taken out by the present applicant in Session Case No.100/2006; whereunder directions were sought against the Investigating Officer (I.O.) to return his passport and permission to go abroad for a period of three and half months. The said application came to be rejected

by the impugned order.

The Factual Matrix :

3. The factual matrix reveal that the applicant is original accused No.4 in the Sessions Case arising out of CR.No.93/2003 registered with the Malabar Hill Police Station, Mumbai for the offences punishable under sections 302, 397, 452 read with section 34 of Indian Penal Code which, ultimately, came to be transferred to DCB, CID and re-registered as CR.No.6/2004.

4. The facts further reveal that one Mrs.Asha Goel, a Canadian national came to be murdered in the house of her brother Mr.Suersh Agarwal in the night falling between 22nd and 23rd August, 2003. Mr.Agarwal then lodged complaint with the Malabar Hill Police Station, Mumbai.

5. The accused No.1- Parab came to be arrested. His confessional statement came to be recorded by the learned Magistrate. The allegations came to be levelled against the applicant and other accused persons, on the basis of which, applicant came to be arrested on 1st October, 2005 and, subsequently, enlarged on bail under order dated 8th December, 2005 subject to the condition of depositing passport with the I.O., which was initially lying with the Court at Bhubaneshwar, however, subsequently, came to be

delivered in possession of I.O.

6. The applicant since wanted to go abroad made an application to the Sessions Court to permit him to leave India. As stated hereinabove above, the said application came to be rejected by the impugned order dated 28th August, 2007. This order is a subject matter of challenge in the present revision application.

7. The present applicant- accused wants to go to Canada and U.S.A. with a view to arrange for further studies of his son and also to develop business network since applicant is in software business.

Submissions :

8. Mr.Gupte, learned senior counsel advanced his submissions in consonance with the prayers made. The above prayers, reiterated by Mr.Gupte before this Court, were strongly opposed by Mr.Thakre, learned special counsel appearing for the C.B.I., contending that the applicant cannot be allowed to leave country, especially, when the investigation is incomplete. He further submits that one of the wanted accused is in Canada, as such it would not be in the interest of

prosecution to allow him to visit Canada. He, in support of his submission, pressed into service one order passed by the Division Bench of this Court in Criminal Writ Petition No.1930/2006 dated 28th September, 2006; wherein this Court issued directions to send materials allegedly seized during the course of investigation in CR.No.6/1994 for forensic examination to the office of Coroner, Ontario, Canada at the behest and cost of Dr.Sadan Kumar Goel, who resides in Canada. The said order is a subject matter of S.L.P. pending in the Supreme Court. As on date, stay to the effect and operation of the order is operating. Learned counsel for C.B.I., thus, submits that if the incriminating material is to be sent to Canada for chemical analysis subject to the result of the S.L.P., in that event, visit of the applicant-accused to Canada will be prejudicial to the interest of the prosecution. He, thus, strongly opposed prayer of the applicant for grant of permission to go abroad.

9. While reacting to the above submission advanced on behalf of C.B.I., Mr.Gupte, after taking instructions from the applicant, who was present in the Court, submitted that if prosecution has any reservation, then applicant shall not visit Canada. He will only visit U.S.A.

10. Upon receiving above submission, Mr.Thakre, learned counsel for C.B.I., again expressed his apprehension and sought to contend that once the applicant- accused is allowed or permitted to leave country and visit U.S.A., then there will hardly be any control on his movements from U.S.A. to other countries. He, thus, submits that it would not be safe to permit the applicant to leave country and visit U.S.A. That is how, for the reasons stated herein, C.B.I. strongly opposed the application of the applicant.

Consideration :

11. Having heard rival parties and having noted that the applicant shall not visit Canada and shall visit only U.S.A., I am inclined to grant permission to the applicant to visit U.S.A., only, but subject to certain conditions mentioned herein.

12. At this juncture, it is relevant to note that wife of the applicant, his father, mother and other relatives are going to remain in India. His business establishment and other immovable properties are in India. As such, chances of the applicant not

returning back to India are remote.

13. In order to seek performance of the guarantee and undertaking given by the applicant to this Court not to visit Canada and restrict his visit to U.S.A. only with an undertaking to return back to India, the applicant is permitted to go to U.S.A. for a period of two months only subject to the following conditions:

(a) the applicant shall not apply for VISA in any manner whatsoever either to go to Canada or any other country other than U.S.A.

(b) The applicant shall not visit Canada or any other country other than U.S.A.

(c) The applicant shall return back to India within two months from the date of leaving this country and shall report to the Sessions Court as well as I.O./ C.B.I. and surrender his passport with the I.O. within three days from the date of return.

(d) The applicant before seeking possession of the passport from the Sessions

Court and/or I.O. and/or C.B.I., as the case may be, shall furnish undertaking on oath to this Court stating therein that,

(i) he shall not apply for VISA to visit Canada and/or any other country in any manner whatsoever other than U.S.A.

(ii) he shall visit U.S.A. only.

(iii) he shall return back to India within two months from the date of leaving this country.

(iv) he shall keep C.B.I. informed about his weekly whereabouts in U.S.A. with detailed address and phone number, if any.

(v) he shall supply VISA details to the C.B.I., immediately after obtaining VISA from the American Embassy with ticket numbers and other relevant details as C.B.I. may seek.

(e) The applicant, before seeking possession of passport, shall furnish bank guarantee of any Rs.25,00,000/- (rupees twenty five lakh only) in favour of the Registrar General of this Court for performance of the terms and conditions of this order with specific clause that breach of any of the conditions of this order shall entitle this Court to invoke bank guarantee. The bank guarantee should also contain a specific clause that, in the event of failure on the part of the applicant (customer of the bank), to surrender original bank guarantee to the guarantor- bank within three months from the date of leaving India, then the bank shall remit the proceeds of the bank guarantee to the Registrar General of this court without there being any demand from it.

14. In the result, the impugned order is set aside. Application is allowed, subject to compliance of the terms of this order.

JUDGE